

**Letter of Findings Number: 01-20130521
Individual Income Tax
For Tax Year 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Income Tax—Residential Historic Rehabilitation Credit.

Authority: IC § 6-8.1-5-1; IC § 6-3.1-22-8; IC § 6-3.1-22-9; IC § 6-3.1-22-15; IC § 6-3.1-22-14; Income Tax Information Bulletin #87A (January 2003).

Taxpayer protests the denial of a claimed credit.

STATEMENT OF FACTS

Taxpayer filed an IT-40 for the tax year 2012. Taxpayer claimed the Residential Historic Rehabilitation Credit on his individual income tax return. The Indiana Department of Revenue ("Department") determined that Taxpayer could not use the credit towards his 2012 tax return. Taxpayer protests the denial of the claimed credit. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax –Residential Historic Rehabilitation Credit.

DISCUSSION

Taxpayer protests a denial of a credit for the 2012 tax year in the amount of \$2,187. The Department determined the Residential Historic Rehabilitation Credit could not be used by Taxpayer in the 2012 tax year since the funding for the credit was exhausted before Taxpayer made his claim for the year 2012.

At the outset the Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

In a protest letter to the Department, Taxpayer's representative states:

[Taxpayer] has obtained the required certifications for the Historic Preservation Credit, and has claimed the maximum amount each year since 2006, carrying forward the unused credit amount from year to year as authorized by [IC 6-3.1-22-14](#), and is entitled to continue to claim the unused portion of the credit for the 2012 tax year.

Regarding the eligibility of Taxpayer's home for the program, Taxpayer provided a copy of a letter from the Indiana Department of Natural Resources ("DNR"). The letter is dated March 21, 2006, and states in part:

Enclosed is the Residential Historic Rehabilitation Credit Certification for the following application:

[Taxpayer's name and address]

Please find the attached documentation of approval of the project for the Indiana Historic Preservation Investment Tax Credit. This application is approved for \$[. . .] tax credit in the 2005-2006 fiscal year.

Taxpayer also provided copies of other documents, including the "Application for Residential Historic Rehabilitation" form, the DNR form "Residential Historic Rehabilitation Credit Certification."

Pursuant to IC § 6-3.1-22-8:

(a) Subject to section 14 of this chapter, a taxpayer is entitled to a credit against the taxpayer's state tax

liability in the taxable year in which the taxpayer completes the preservation or rehabilitation of historic property and obtains the certifications required under section 9 of this chapter.

(b) The amount of the credit is equal to twenty percent (20[percent]) of the qualified expenditures that:

- (1) the taxpayer makes for the preservation or rehabilitation of historic property; and
- (2) are approved by the division.

(c) In the case of a husband and wife who:

- (1) own and rehabilitate a historic property jointly; and
- (2) file separate tax returns;

the husband and wife may take the credit in equal shares or one (1) spouse may take the whole credit.

IC § 6-3.1-22-9 also states:

A taxpayer qualifies for a credit under section 8 of this chapter if all of the following conditions are met:

(1) The historic property is:

- (A) located in Indiana;
- (B) at least fifty (50) years old; and
- (C) except as provided in section 8(c) of this chapter, owned by the taxpayer.

(2) The division certifies that the historic property is listed in the register of Indiana historic sites and historic structures.

(3) The division certifies that the taxpayer submitted a proposed preservation or rehabilitation plan to the division that complies with the standards of the division.

(4) The division certifies that the preservation or rehabilitation work that is the subject of the credit substantially complies with the proposed plan referred to in subdivision (3).

(5) The preservation or rehabilitation work is completed in not more than:

- (A) two (2) years; or
- (B) five (5) years if the preservation or rehabilitation plan indicates that the preservation or rehabilitation is initially planned for completion in phases.

The time in which work must be completed begins when the physical work of construction or destruction in preparation for construction begins.

(6) The historic property is principally used and occupied by the taxpayer as the taxpayer's residence.

(7) The qualified expenditures for preservation or rehabilitation of the historic property exceed ten thousand dollars (\$10,000).

From the documents provided, Taxpayer's rehabilitation project was certified by the DNR. Thus the issue before the Department is not whether Taxpayer's rehabilitation project qualified, since Taxpayer has apparently satisfied IC § 6-3.1-22-8 and IC § 6-3.1-22-9.

The Department notes that IC § 6-3.1-22-15 states:

The amount of tax credits allowed under this chapter may not exceed two hundred fifty thousand dollars (\$250,000) in a state fiscal year beginning July 1, 2001, or thereafter.

The Department has also issued a nontechnical Information Bulletin to assist the general public regarding the Residential Historic Rehabilitation Credit. That bulletin, Income Tax Information Bulletin #87A (January 2003), 26 Ind. Reg. 2171, states in relevant part:

IV. LIMITATION OF THE TAX CREDIT

The qualified expenditures for preservation or rehabilitation of the historic property must exceed ten thousand dollars (\$10,000). The tax credit is equal to twenty percent (20 [percent]) of the qualified expenditures that the taxpayer makes for the preservation or rehabilitation of the historic property. The total amount of all credits for all taxpayers may not exceed two hundred fifty thousand dollars (\$250,000) in a state fiscal year.

V. PROCEDURE TO CLAIM THE CREDIT

The taxpayer shall claim the credit on the taxpayer's annual state income tax return. The taxpayer shall submit to the Department the certifications approved by the division.

If the credit exceeds the taxpayer's state income tax liability for the taxable year for which the credit is first

claimed, the excess may be carried over to succeeding taxable years and used as a credit during those taxable years. The credit may be carried forward and applied to succeeding taxable years for fifteen taxable years following the unused credit year. A taxpayer is not entitled to a refund or carryback of any unused credit.

Taxpayer argues that he is entitled to the credit, stating that "[t]he Credit was properly applied for and certified in 2006." Taxpayer then cites to the carry-forward provision found at IC § 6-3.1-22-14, which states:

- (a) If the credit provided by this chapter exceeds a taxpayer's state tax liability for the taxable year for which the credit is first claimed, the excess may be carried over to succeeding taxable years and used as a credit against the tax otherwise due and payable by the taxpayer under [IC 6-3](#) during those taxable years. Each time that the credit is carried over to a succeeding taxable year, the credit is to be reduced by the amount that was used as a credit during the immediately preceding taxable year. The credit provided by this chapter may be carried forward and applied to succeeding taxable years for fifteen (15) taxable years following the unused credit year.
- (b) A credit earned by a taxpayer in a particular taxable year shall be applied against the taxpayer's tax liability for that taxable year before any credit carryover is applied against that liability under subsection (a).
- (c) A taxpayer is not entitled to any carryback or refund of any unused credit.

The Department finds that the cap found at IC § 6-3.1-22-15 applies to the year that a taxpayer applies for and is certified for the Residential Historic Rehabilitation Credit. Thus for Taxpayer, the year he applied for and was approved for the credit, the "total amount of all credits for all taxpayers may not exceed two hundred fifty thousand dollars (\$250,000) in a state fiscal year." Taxpayer was eligible to carry forward and apply any unused credit, under IC § 6-3.1-22-14(a), "to succeeding taxable years for fifteen (15) taxable years following the unused credit year." Based upon the documentation provided by Taxpayer, the Department finds that Taxpayer has met his burden of proof. Taxpayer's protest is sustained.

FINDING

Taxpayer's protest is sustained.

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